

§ 416.269 What is done to determine whether your earnings are too low to provide comparable benefits and services you would receive in the absence of those earnings.

(a) *What we determine.* We must determine whether your earnings are too low to provide you with benefits and services comparable to the benefits and services you would receive if you did not have those earnings (see § 416.265(d)).

(b) *How the determination is made.* In determining whether your earnings are too low to provide you with benefits and services comparable to the benefits and services you would receive if you did not have those earnings, we compare your anticipated gross earnings (or a combination of anticipated and actual gross earnings, as appropriate) for the 12-month period beginning with the month for which your special SSI eligibility status is being determined to a threshold amount for your State of residence. This threshold amount consists of the sum for a 12-month period of two items, as follows:

(1) The amount of gross earnings including amounts excluded under § 416.1112(c) (4), (5) and (7) that would reduce to zero the Federal SSI benefit and the optional State supplementary payment for an individual with no other income living in his or her own household in the State where you reside. This amount will vary from State to State depending on the amount of the State supplementary payment; and

(2) The average expenditures for Medicaid benefits for disabled and blind SSI cash recipients, including recipients of federally administered State supplementary payments only, in your State of residence.

(c) *How the eligibility requirements are met.* (1) You meet the requirements in § 416.265(d) if the comparison shows that your gross earnings are equal to or less than the applicable threshold amount for your State, as determined under paragraphs (b) (1) and (2) of this section. However, if the comparison shows that these earnings exceed the applicable threshold amount for your State, we will establish (and use in a second comparison) an individualized threshold taking into account the total amount of:

(i) The amount determined under paragraph (b)(1) of this section that would reduce to zero the Federal SSI benefit and State supplementary payment for your actual living arrangement;

(ii) The average Medicaid expenditures for your State of residence under paragraph (b)(2) of this section or, if higher, your actual medical expenditures in the appropriate 12-month period;

(iii) Any amounts excluded from your income as impairment-related work expenses (see § 416.1112(c)(6)), work expenses of the blind (see § 416.1112(c)(8)), and income used or set aside for use under an approved plan for achieving self support (see § 416.1112(c)(9)); and

(iv) the value of any publicly-funded attendant care services as described in paragraph (d) of this section (including personal care assistance).

(2) If you have already completed the 12-month period for which we are determining your eligibility, we will consider only the expenditures made in that period.

(d) *Attendant care services.* Expenditures for attendant care services (including personal care assistance) which would be available to you in the absence of earnings that make you ineligible for SSI cash benefits will be considered in the individualized threshold (as described in paragraph (c)(1) of this section) if we establish that they are:

(1) Provided by a paid attendant;

(2) Needed to assist with work-related and/or personal functions; and

(3) Paid from Federal, State, or local funds.

(e) *Annual update of information.* The threshold amounts used in determinations of sufficiency of earnings will be based on information and data updated no less frequently than annually.

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Subpart C—Filing of Applications

AUTHORITY: Secs. 702(a)(5), 1611, and 1631 (a), (d), and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382, and 1383 (a), (d), and (e)).

SOURCE: 45 FR 48120, July 18, 1980, unless otherwise noted.